

**OCCUPATIONAL SAFETY
AND HEALTH STANDARDS BOARD**

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**FINDING OF EMERGENCY
GOVERNMENT CODE SECTION 11346.1
OCCUPATIONAL SAFETY AND HEALTH STANDARDS BOARD
PROPOSED EMERGENCY AMENDMENTS TO TITLE 8
CALIFORNIA CODE OF REGULATIONS
SECTION 3427 OF THE GENERAL INDUSTRY SAFETY ORDERS**

The Occupational Safety and Health Standards Board (Board) hereby finds that the proposed emergency amendment to Title 8 of the California Code of Regulations, Section 3427 of the General Industry Safety Orders (GISO), as described in the Informative Digest below, constitutes an emergency regulation pursuant to Government Code Section 11346.1.

On March 7, 2003, the then Governor Gray Davis proclaimed a State of Emergency for Riverside, San Bernardino and San Diego Counties due to the epidemic bark beetle infestation. Wild land fires in the fall of 2003 significantly added to the number of dead or damaged trees in these counties. For public safety purposes, and before the full restoration of damaged telephone lines, cable and low and high voltage electrical lines can be achieved, it is essential that these trees are expeditiously removed. It is also necessary to remove these damaged trees as soon as possible in order to minimize the extent and amount of dry and dead wood that could serve as fuel for the current fire season, as last year's Southern California fires covered over half a million acres, destroyed approximately 2,300 structures, caused billions of dollars in damage, and resulted in 16 fatalities.

The damaged condition of these trees, however, presents an immediate hazard not only to the public in nearby areas, but to the workers responsible for clearing and removing the trees. The location and extent of damage to individual trees make them unsafe to access for trimming or removal by conventional methods such as climbing or use of aerial devices. Consequently, in order to expedite the safe removal of these damaged trees, the Board adopted an emergency standard permitting the use of cranes to access the trees under certain circumstances and with specific safeguards in place when access by climbing or use of an aerial device is unsafe to conduct tree removal operations. The emergency standard was approved by the Office of Administrative Law (OAL), OAL File No. 04-0420-04E, filed with the Secretary of State, and became effective on April 29, 2004.

The Board has since publicly noticed the proposed permanent standard, California Regulatory Notice Register No. 18-Z, dated April 30, 2004, and permitted public comment on the proposed permanent standard at its June 17, 2004, public meeting. As a result of public comment and Board Member concerns, the Board requested that a representative advisory committee be convened to further review the standard. Meanwhile, the Board has elected to extend and amend the existing emergency standard to limit the practice to only fire and/or bark beetle damaged trees within the specified State of Emergency Counties. The Board intends to adopt the

permanent standard at a future Business Meeting, after the advisory committee meeting has convened on August 12, 2004, but before the amended emergency standard has expired.

INFORMATIVE DIGEST OF PROPOSED ACTION/POLICY STATEMENT OVERVIEW

The Board proposes to adopt emergency amendments to GISO Section 3427, "Tree Work, Maintenance or Removal," for the reasons outlined above, as authorized by Labor Code Section 142.3.

Proposed New Subsections 3427(a)(1)(A) and (B).

Existing subsection (A) requires that when a tree cannot be safely accessed by climbing or the use of aerial devices, a qualified tree worker may be hoisted into position by using an approved tree worker's saddle suspended from the closed hook of a crane equipped with a device or locking means to prevent the load from becoming disengaged. An amendment is proposed to specify that only fire and/or bark beetle damaged trees may be accessed using this method. Moreover, it is proposed to reletter subsection (A) as new subsection (B) and add a new subsection (A) which specifies that the emergency provisions contained in Section 3427(a)(1)(B) are for the use of cranes to provide access into fire and/or bark beetle damaged trees only, and are permitted only within Riverside, San Bernardino, and San Diego Counties. The proposed amendments will have the effect of limiting the practice of using cranes to access only fire and/or bark beetle damaged trees in those aforementioned counties identified in the March 7, 2003 Governor's State of Emergency Proclamation.

DOCUMENTS RELIED UPON

- June 17, 2004, Public Hearing Summary of the Occupational Safety and Health Standards Board held in Glendale, CA.
- March 7, 2003, Proclamation by the Governor of the State of California.

These documents is available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite, 350, Sacramento, California.

STRIKEOUT/UNDERLINE DRAFT PROPOSAL

See Attachment No. 1.

SIDE-BY-SIDE CODE COMPARISON WITH FEDERAL STANDARD

See Attachment No. 2.

Federal OSHA general industry standards do not address requirements for climbing/access via cranes specific to tree maintenance or removal. However, a side-by-side comparison is provided for informational purposes. The comparison identifies federal OSHA standards that address entry into trees associated with electrical hazards (29 CFR 1910.268) and federal marine

terminal standards that address the lifting of employees by the hoisting apparatus of a crane or derrick.

COST ESTIMATES OF PROPOSED ACTION

The proposed standard would have no cost or fiscal impact to affected employers because it does not mandate, but rather permits an alternative method (use of a crane) to access trees when conventional methods are unsafe.

Costs or Savings to State Agencies

No cost or savings to state agencies would result as a consequence of the proposed action.

Costs or Savings in Federal Funding to the State

The proposal would not result in costs or savings in federal funding to the state.

Costs or Savings to Local Agencies or School Districts Required to be Reimbursed

No costs to local Agencies are required to be reimbursed. See explanation under the heading “Determination of Mandate.”

Other Nondiscretionary Costs or Savings Imposed on Local Agencies

This proposal does not impose nondiscretionary costs or savings on local agencies.

DETERMINATION OF MANDATE

The Occupational Safety and Health Standards Board has determined that the proposed standards do not impose a local mandate. Therefore, reimbursement by the State is not required pursuant to Part 7 (commencing with Section 17500) of Division 4 of the Government Code because the proposed amendments will not require local agencies or school districts to incur additional costs in complying with the proposal. Furthermore, these standards do not constitute a “new program or higher level of service of an existing program within the meaning of Section 6 of Article XIII B of the California Constitution.”

The California Supreme Court has established that a “program” within the meaning of Section 6 of Article XIII B of the California Constitution is one which carries out the governmental function of providing services to the public, or which, to implement a state policy, imposes unique requirements on local governments and does not apply generally to all residents and entities in the state. (County of Los Angeles v. State of California (1987) 43 Cal.3d 46.)

These proposed standards do not require local agencies to carry out the governmental function of providing services to the public. Rather, these standards require local agencies to take certain steps to ensure the safety and health of their own employees only. Moreover, these proposed standards do not in any way require local agencies to administer the California Occupational

Safety and Health program. (See City of Anaheim v. State of California (1987) 189 Cal.App.3d 1478.)

These proposed standards do not impose unique requirements on local governments. All state, local and private employers will be required to comply with the prescribed standards.

Attachments